

MD

Orchard Hill at Sudbury
MHFA No. 97-001-N

HUD Project No. 023-98019

REGULATORY AGREEMENT

Date: December 20, 1999

Owner's Name and Address: Drumlin Development, LLC
76 Summer Street
Manchester, MA 01944

Name and Location of Development: Orchard Hill at Sudbury
761 Post Road
Sudbury, MA 01776

Initial Replacement Reserve Requirement: \$20,135/yr.

Owner's Equity: \$2,349,906

AGREEMENT between Owner and Massachusetts Housing Finance Agency (the "Agency"), a body politic and corporate, organized and operated under the provisions of Chapter 708 of the Acts of 1966 of the Commonwealth of Massachusetts as amended (the "Act").

IN CONSIDERATION of the first mortgage loan which the Agency has agreed to advance the Owner for the permanent financing of a residential housing development which is more fully described in the Mortgage, Security Agreement, and Assignment of Leases and Rents ("Mortgage") of even date herewith, the Owner covenants and agrees that in connection with ownership and operation of the Development it will comply, and will require any purchaser of the Property to comply, with the following:

1. (a) Rentals in the Development shall be in accordance with the Rental Schedule previously approved by the Agency, which is attached hereto as Appendix A and is made a part hereof. Not less than 20% of the units (or such higher percentage as may be required by the Residential Compliance Agreement as hereinafter referred to) shall be rented at all times to low-income persons or families at or below the adjusted rentals shown on said schedule. In fulfilling this requirement, the Owner will accept referrals of tenants from the Public Housing Authority in the city or town in which the Development is located, and will not unreasonably refuse occupancy to any prospective tenants so referred. Income verifications satisfactory in form and manner to the Agency will be made at least every two (2) years for all tenants who are low-income persons or families, or more frequently if required by the Residential Compliance Agreement. As used in this Agreement the term "low-income person or families" shall mean persons or families eligible at any given time for occupancy in public housing in the city or town in which the Development is located, but in any event having an income of 50% or less of area median income as determined by HUD;

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the terms "adjusted rental," "below market rental", and "market rate rental" shall have the same meaning as in Section 6 of the Act, and the term "annual income" shall have the same meaning as in Section 1(e) of the Act.

(b) The Owner may change the rents shown on Appendix A attached hereto from time to time subject to the terms and provisions hereof and subject to the provisions contained in the Rent Regulations with respect to the Agency's review and approval of rents.

2. Any and all other definitions of "rents" or "rentals" that may be applicable because of federal or state subsidy programs shall be determined by the rules and regulations of such subsidy programs.
3. This Agreement, the Mortgage Note, the Mortgage, the Residential Compliance Agreement ("Compliance Agreement") and Development Fund Agreement executed by the parties, all of even date and relating to the Development shall be known collectively as the "Contract Documents." The terms "Property" and "Development" are as defined in the Mortgage.
4. The Owner shall comply with the Owner's Tenant Selection Plan and the Tenant Selection Regulations as approved by the Agency. As between applicants equally in need and eligible for occupancy, preference shall be given in the leasing of units to applicants displaced by:
a) public action; b) natural disaster; or c) reason of domestic violence in accordance with the terms of the Agency's Tenant Selection Regulations, or otherwise in accordance with statutory requirements and the Tenant Selection Plan, as approved. There shall be no discrimination on the selection of tenants by reason of the fact that there are children in the family of the applicant except as otherwise permitted by Massachusetts General Laws Chapter 151B, Section 4.
5. There shall be no discrimination upon the basis of race, creed, color, religion, disability, sex, sexual orientation, national origin, age or familial status in the lease, use, or occupancy of the Development or in connection with the employment or application for employment of persons for the operation and management of the Development. An Affirmative Action Plan with regard to advertising for, hiring and promoting employees of the Owner or of the management company hired by the Owner must be approved by the Agency. Contracts for services and goods will be subject to such Affirmative Action Plan.
6. All records, accounts, books, tenant lists, applications, waiting lists, documents, and contracts relating to the Development shall at all times be kept separate and identifiable from any other business of the Owner which is unrelated to the Development, and shall be maintained, as required by regulations issued by the Agency from time to time, in a reasonable condition

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for proper audit and subject to examination during business hours by representatives of the Agency. Failure to keep such books and accounts and/or make them available to the Agency will be a default pursuant to section 2.1 of the Mortgage.

7. Commencing sixty (60) days after the Agency cost certification cut off date (which date shall be the date selected by the Owner which cannot be later than sixty (60) days after the date of substantial completion indicated in the Final Release Report issued by the Agency's Design and Technical Department), the Owner shall establish and maintain a reserve fund for replacements (the "Replacement Reserve") in an escrow account controlled by the Agency in an amount per month specified above. It is agreed by the Owner that the replacement reserve amount specified above shall be adjusted each year by the amount of the adjustment reasonably permitted or required by the Agency, which adjustment shall be indexed to the Agency's underwriting, or based upon capital needs assessments, as required and approved by the Agency, and which shall be completed at the Owner's expense. The interest earned on the account shall remain in the Replacement Reserve for the benefit of the Development. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements or mechanical equipment, may be made only after receiving the prior consent in writing of the Agency, which consent will not be withheld unreasonably. The Agency agrees that during the term of the Mortgage and until the Mortgage has been repaid in full, all development reserves, escrows and accounts will be the sole property of the Owner, but shall be subject to the Contract Documents, Agency rules, regulations, controls and escrow arrangements. In the event of a default in the terms of the Mortgage whereby repayment of the loan is accelerated, the Agency may apply or authorize the application of the balance in such fund to the amount due on the Mortgage Debt as accelerated. In the event of prepayment in full of the Mortgage Note pursuant to the provisions thereof and of the Mortgage, all Agency controls on the funds held in the Replacement Reserve shall terminate and the balance in such funds shall belong to the Owner.
8. Owner shall establish a Distribution Account, in accordance with the following requirements:
 - (a) Only such Development income from rents or other sources may be allocated to the Distribution Account as may remain after, and any amounts in the Distribution Account shall always be available for, in the following order of priority: (i) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Mortgage and the Mortgage Note; (ii) payment of or adequate reserve for all current obligations of the Development other than the mortgage loan, including escrows for real estate taxes and insurance; (iii) deposit of all amounts required to be deposited in the Replacement Reserve; and (iv) payments of operating

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expense loans from the distribution account by the general partners of the Owner for Development expenses, provided that the Owner shall have obtained prior Agency approval for such loans and shall have supplied the Agency with such evidence as the Agency may reasonably request as to the application of the proceeds of such operating expense loans to Development expenses. Distribution may be made from the Distribution Account only when all currently payable obligations of the Owner as identified in subsections (i), (ii), (iii) and (iv) above are paid as evidenced by a certificate provided by an independent accountant indicating that no such obligations are more than thirty days past due.

- (b) No additional amount shall be allocated to the Distribution Account, and no amount shall be paid out of said account, when a default for which notice has been issued exists under the Contract Documents, or when there has been failure to comply with the Agency's notice of any reasonable requirement for proper maintenance of the Development, or when there is outstanding against all or any part of the Development any lien or security interest on the Development assets other than the Mortgage unless provided for to the Agency's reasonable satisfaction by insurance, reserve, or in a similar manner. No amount shall be allocated to the Distribution Account which constitutes or is derived from the borrowed funds or from the sale of capital assets, except with the prior written authorization of the Agency.
- (c) Subject to the provisions set forth above, distributions to the Owner may be made from the Distribution Account, provided that no distribution for any fiscal year may exceed that percentage of the Owner's Equity in the Development which from time to time is permitted under the Act, and which, at the time of execution hereof, is ten percent (10%). The ten percent (10%) standard shall apply throughout the term of the Mortgage, except that if the Agency establishes a higher rate at a later date, the Agency will consider the Owner's request for a higher distribution. Distributions shall be permitted with respect to each fiscal year that the Mortgage is outstanding, but not before all current and owed-to-date development expenses have been paid and reserves, then due or owing, have been funded. In the event that distributions are not made in any succeeding year to the maximum percentage permitted by law at the time with respect to such year, then in that event, but subject to the provisions of subsections (a) through (c), such deficiency may be made up without interest, out of amounts in the Distribution Account which have been accumulated over any three preceding or succeeding years. Distribution may in no case be made from the Excess Rental Account established pursuant to paragraph 9 hereof. Distributions may be made only after all deposits required pursuant to Paragraph 8(a) have been made.

- (d) The amount of the Owner's Equity set forth on the first page of this Agreement shall be as described in Section 5(d) of the Act and, if requested by the Owner, shall be subject to final adjustment once there is ninety-three percent (93%) occupancy at pro forma rents ("Project Stabilization") pursuant to the appraisal process outline below. Thereafter, the Owner's Equity shall be adjusted only upon the Owner's request as set forth in this subsection. The Agency agrees to re-evaluate, at the Owner's written request, the Owner's Equity in the Development every five years (or at such shorter interval as may be permitted under the Act). The first five-year period shall commence with the permanent loan closing, using the equity finally established at cost certification or Project Stabilization, as the case may be. The revalued Owner's Equity will be established by Agency staff or an outside appraiser selected by the Agency. In the event the Owner disputes the Agency's appraisal, the Owner shall have the right to withdraw the re-evaluation of equity request or the Owner may contract a second appraisal. If the initial appraisals are less than ten percent (10%) apart of Development value (i.e., the higher appraisal is less than 110% of the lower appraisal), the value shall be the average of the two appraisals. In the event the appraisals are ten percent (10%) or more apart and the parties are not able to reconcile the differences and agree upon a value, the initial appraisers shall select a third appraiser whose value determination shall be binding. The appraisers shall follow the Agency's standard appraisal policies and shall be instructed to take into account (x) the Development's favorable financing rate and (y) the low income use restrictions pursuant to the MHFA financing on the Development. All costs for appraisals shall be borne by the Owner (which shall not be funded from the reserve fund for replacements).
9. All rentals, if any, received by the Owner in excess of the below-market rentals established for each unit and not necessary for Development operations shall be deposited in an Excess Rental Account. Funds from this Account may be applied pursuant to written Agency approval to reduce rentals so as to make units more available to low income persons and families.
10. Occupancy shall be permitted only upon execution of a residency agreement in form satisfactory to the Agency. All residency agreements shall be expressly subordinated to the Mortgage, and shall contain clauses, among others, wherein each individual resident of units rented at Adjusted Rentals:
- (a) certifies the accuracy of the statements made in the application and income survey;

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- (b) agrees that the family income, family composition and other eligibility requirements, shall be deemed substantial and material obligations of his occupancy; that he will comply promptly with all requests for information with respect thereto from the Owner or the Agency, and that his failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his occupancy;
 - (c) agrees that at such time as the Owner or Agency may direct, he will furnish to the Owner certification of then current family income, with such documentation as the Agency shall require; and
 - (d) agrees to such charges as the Agency has previously approved for any facilities and/or services which may be furnished by the Owner or others to such resident upon his request, in addition to the facilities and services included in the approved Rental Schedule.
11. The Owner shall not without the prior written approval of the Agency, which approval will not unreasonably be withheld, and the approval of any other governmental authority whose jurisdiction includes regulation of the Owner, nor contrary to Agency law effective at the time in question:
- (a) convey, transfer, or encumber any of the Development including the grant of commercial leases, or permit the conveyance, transfer or encumbrance of such property (except for residency agreements);
 - (b) assign, transfer, dispose of, or encumber any personal property of the Development, including rents, or pay out any funds other than: (i) distributions with respect to equity expressly permitted under Paragraph 8; (ii) reasonable operating expenses and necessary repairs; (iii) proceeds of the sale of ownership shares of the Owner, subject to the terms of the Development Fund Agreement; and (iv) repayment of loans which the Owner makes to the Development at such rates and upon such conditions as the Agency reasonably agrees are fair and reasonable to the Development, provided, however, that the Owner is expressly permitted to assign, transfer, dispose of or encumber any tangible personal property to be replaced by or with other items of personal property of like quality and value, and free of superior title, liens and claims;
 - (c) convey, assign, transfer, or permit the surrender or relinquishment of 25% or more of the limited membership interests to any new member or any right to manage or

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receive the rents and profits of the Development, except with the Agency's prior written approval, and unless the transferees or assignees of the members assume the obligations of the Contract Documents by an instrument in writing satisfactory to the Agency;

- (d) substantially remodel, add to, reconstruct, or demolish any part of the Development or substantially subtract from any real or personal property of the Development;
- (e) permit the use of the dwelling accommodations of the Development for any purpose except residences or permit commercial use greater than that originally approved by the Agency, if any;
- (f) incur any liability direct or contingent, out of the ordinary course of business in developing and operating a low and middle income assisted living residential development;
- (g) except as stated expressly in the Contract Documents or otherwise approved by the Agency in writing, pay any compensation or make any distribution of income or other assets to any of the owners of shares of stock or of beneficial interest;
- (h) enter into any management contract other than as approved by the Agency; or
- (i) modify or amend the Owner's operating agreement, or other governing instrument or instruments, except as permitted by the Contract Documents.

12. The Owner shall provide for the management of the Development in a manner reasonably satisfactory to the Agency. Any management contract entered into by the Owner shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon thirty (30) days notice by the Owner if such termination is requested by the Agency and be terminable immediately by the Agency if the Owner fails to implement such request by the Agency. Upon receipt of such request or notice of termination, the Owner shall immediately make arrangements reasonably satisfactory to the Agency for continuing proper management of the Development. Any event of default under the Contract Documents shall be cause for termination of the management contract by the Agency. The Owner, with the approval of the Agency, may retain the terminated management company for up to thirty (30) days while a replacement management company is being selected. In the event that, subsequent to thirty (30) days after the termination of the management contract by the Owner (whether or not such termination is pursuant to the provisions of this section), the Owner has not made arrangements reasonably satisfactory to the Agency for continuing proper

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management of the Development, the Agency shall have the right to designate a management agent for the Development.

13. Payment for services, supplies, or materials shall not exceed the amount ordinarily and reasonably paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.
14. Within the ninety (90) days following the end of each fiscal year of the Development, the Agency shall be furnished with a complete annual financial report for the Development based upon an examination of the books and records of the Owner containing a detailed, itemized statement of all income and expenditures, prepared and certified by a Certified Public Accountant in accordance with the reasonable requirements of the Agency which include: (i) the income statement submitted on an Agency form; and (ii) the financial report on an accrual basis and in conformity with generally accepted accounting principles applied on a consistent basis. A duly authorized agent of the Owner must approve such submission in writing.
15. At the request of the Agency, the Owner shall furnish quarterly financial statements and occupancy reports and shall give specific answers to questions upon which information is reasonably desired from time to time relative to the ownership and operation of the Development.
16. All rents and other receipts of the Development shall be deposited in the name of the Owner or a nominee for the Owner in a bank or banks, whose deposits are insured by the F.D.I.C. The Agency shall at all times be advised of the names of the accounts and the names of the banks. Such funds shall be withdrawn only in accordance with the provisions of this Agreement. Any person receiving funds of the Development other than as permitted by the Contract Documents shall immediately deposit such funds in a Development bank account, and failing to do so in violation of this Agreement, shall hold such funds in trust for the Development.

The Owner, its members, and the Managing Agent shall be responsible and account for any and all disbursements made from rents and receipts from the operation of the Development, and failure to account for any cash disbursements used for any purpose not permitted by the Contract Documents shall make the Owner, its members, and the Managing Agent personally liable to the extent of such unaccounted for disbursements. Development income may be used only for the purposes specified in Section 8(a)(i)-(iv) and 8(c).

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17. There shall be full compliance with the provisions of all state or local laws prohibiting discrimination in housing on the basis of race, creed, color, religion, disability, sex, sexual orientation, national origin, age, or familial status, and providing for nondiscrimination and equal opportunity in housing. Failure or refusal to comply with any such provisions shall be a proper basis for the Agency to take any corrective action it may deem necessary including, but not limited to, the rejection of future applications for mortgage loans and the refusal to enter into future contracts of any kind with which the Owner or its members are identified.
18. This Agreement shall bind, and the benefits shall inure to, respectively, the Owner and its successors and assigns, and the Agency and its successors and assigns, so long as the Mortgage continues in effect, whether or not the Agency shall continue to be the Owner of the Mortgage, provided, however, that this Agreement shall become a nullity upon payment and discharge of the Mortgage. Borrower agrees to make all payments due under the Mortgage and with respect to the Mortgaged Debt in accordance with the terms and provisions of the Contract Documents.
19. The Owner warrants that it has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.
20. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
21. Notices shall be deemed delivered when mailed by certified mail, return receipt requested, to the Owner at the above-referred-to address with copies sent to Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111, Attn: Joshua Davis, Esquire and to the Agency at One Beacon Street, Boston, Massachusetts 02108, Attn: General Counsel, or to such other place as a party may designate in writing.
22. No amendments will be made to the Owner's Operating Agreement which would affect the Agency's rights under any of the Contract Documents without the Agency's prior written approval; (ii) in the event of retirement, death or insanity of any member, the business will be continued by the remaining member(s), and (iii) no member will voluntarily withdraw from the Owner without the Agency's prior written approval. Following completion of the Development, approval of the withdrawal of a member will not be unreasonably withheld if there are one or more remaining or substitute members who, in the Agency's reasonable

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opinion, are capable and competent to cause the Owner to have the capacity to effectively own and operate the Development.

23. In accordance with Section 542(a) of the Housing and Community Development Act of 1992 and the implementing regulations (24 C.F.R. Part 266), the Owner hereby declares that it is a sole asset mortgagor.
24. The Mortgage is insured by the U.S. Department of Housing and Urban Development (HUD) under the Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans, and the Owner shall comply with all regulations and requirements thereunder, as found at 24 C.F.R. Part 266, for as long as the Mortgage is insured by HUD. In connection herewith, Owner agrees to make all Development books and financial records, including those required to be maintained by the terms hereof, available to HUD's Inspector General and/or General Accounting Office for review with appropriate notification.
25. Owner shall not, without the prior written approval of the Agency, permit the use of the dwelling accommodations of the Development for any purpose except residences or permit commercial use greater than that originally approved by the Agency, if any.
26. Attached hereto as Appendix B is a description of the land on which the mortgaged property is located.
27. Borrower shall maintain the Development in good physical and financial condition in accordance with the Agency's requirements and standards and the requirements and standards of any applicable Housing Subsidy Program.

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IN WITNESS WHEREOF, the parties have caused these present to be signed and sealed by their respective, duly authorized representatives, as of the day and year first written above.

OWNER:

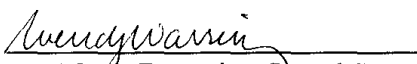
DRUMLIN DEVELOPMENT, LLC

By:

 12/20/95
Clifford T. Hughes, Manager

MASSACHUSETTS HOUSING FINANCE AGENCY

By:


Wendy E. Warring, General Counsel

Attachments:

Appendix A - Rent Schedule

Appendix B - Property Description

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COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 20, 1999

Then personally appeared the above-named Wendy E. Warring, General Counsel of the Massachusetts Housing Finance Agency and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of said Agency.

Before me,

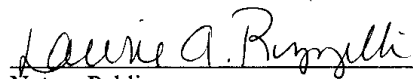

Notary Public
My Commission Expires: 12/23/99

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 20, 1999

Then personally appeared before me the above-named Clifford T. Hughes, Manager of Drumlin Development, LLC, and acknowledged the foregoing to be his free act and deed acting in his capacity as Manager of Drumlin Development, LLC and the free act and deed of said limited liability company.


Notary Public
My Commission expires: 12/23/99

LAURIE A. RIZZELLI
Notary Public
My Commission Expires December 23, 1999

APPENDIX A
PROPERTY DESCRIPTION

The land in Sudbury, Middlesex County, Massachusetts as shown on a plan to be recorded herewith entitled "ALTA/ACSM Land Title Plan of Land located in Sudbury (Middlesex County), Mass. prepared by Christopher R. Mello, PLS of Eastern Land Survey Associates, Inc. of 104 Lowell Street, Peabody, Massachusetts, Scale 1" = 60' and dated _____," being bound and described as follows:

NORTHERLY by Boston Post Road, in 4 courses, 368.16 feet, 285.36 feet, 93.38 feet, and 107.12 feet;

EASTERLY by land of Algonquin Council, Boy Scouts of America, Inc., 459.10 feet;

SOUTHERLY also by said Algonquin land, in 4 courses, 221.30 feet, 296.07 feet, 334.22 feet, and 100.29 feet;

NORTHWESTERLY by land of Richard H. and Sally J. White, 323.16 feet; and

WESTERLY by land of said White, 199.12 feet.

Said parcel contains approximately 443,624 square feet or approximately 10.18 acres.

The address of the premises is 761 Boston Post Road, Sudbury, Massachusetts 01776.

APPENDIX B

RENT SCHEDULE

RENT SCHEDULE: <i>Per 5/12/98 Mortgage Increase</i>	<u>LOW INCOME</u> 30 % of 50% Tax Credit Rents			<u>MARKET RATE</u> <i>Dbl Occ.</i>	
	<u>0BR</u>	<u>1BR</u>	<u>0BR</u>	<u>1BR</u>	<u>1BR</u>
NO. OF BEDROOMS (45)					
NO. OF UNITS (<u>45</u> Total)	2	7	8	27	1
NET SQ. FT. UNIT	370	515	370	515	515
ELEV. (E) / NON ELEV. (N)	E	E	E	E	E
MARKET RATE RENT					
<u>10.0% RATE 20 YR. TERM:</u>	\$1,034	\$1,034	\$3,434	\$3,659	\$4,463
BELOW MARKET RENT:					
(Cost Based Rent)	\$525	\$525	\$2,925	\$3,150	\$3,954
MHFA RENT ADJUSTED:	30% OF 50% of Area Median Income				
UNDERWRITING RENT	\$525	\$525	\$2,925	\$3,150	\$3,954
UTILITY ALLOWANCE:	Incl.	Incl.			